

The Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

DAVID RICE and ELIZABETH RICE,  
individually and as a marital community; and  
SETH DONAHUE, individually,

Plaintiffs,

vs.

CITY OF ROY, a Washington municipality;  
CHRIS JOHNSON, individually; and  
DARWIN ARMITAGE, individually

Defendants.

NO. 3:20-cv-05223-RJB

**PLAINTIFFS' MOTION TO AMEND  
PURSUANT TO FED. R. CIV. P. 15(b)(1)**

**I. RELIEF REQUESTED**

Plaintiffs, David Rice and Elizabeth Rice, individually and as a martial community, and Seth Donahue, individually, by and through their attorneys of record, hereby submit their motion to amend their complaint pursuant to Fed. R. Civ. P. 15(b)(1) and add Mayor Rawlin "Anthony" McDaniel.

**II. STATEMENT OF FACTS**

During the course of trial, Defendants have, through arguments and evidence, demonstrated that in fact, Mayor Rawlin (Anthony) McDaniel (hereinafter "Mayor McDaniel") along with Chiefs Armitage, ratified Officer Johnson's actions through their failure to properly

investigate and initiate disciplinary action. Mayor McDaniel was the policy maker as it pertains to the City of Roy's law enforcement policies and disciplinary actions.

### **III. STATEMENT OF ISSUES**

The Plaintiffs' Rule 15(b)(1) Motion to Amend presents one issue as follows:

1. Include Mayor Rawlin "Anthony" McDaniel as a defendant for purposes of 42 U.S.C. § 1983 *Monell* claims against the City of Roy, is a policymakers for the City of Roy with respect to discipline?

2. Paragraphs VIII (identification of parties), XIX – XXIII (factual allegations), XXVI (Section 1983 action), XXIX (Negligence), XXXVII (loss of consortium) should be amended to include Mayor McDaniel.

### **IV. EVIDENCE RELIED UPON**

The Plaintiffs rely upon the pleadings already on record as well as the evidence and testimony presented in Plaintiffs' Case-in-Chief.

### **V. LEGAL AUTHORITY AND ARGUMENT**

#### **A. Plaintiffs' Move to Amend their Complaint under Rule 15(b)(1)**

Amendments to pleadings are liberally granted. (*Forman v. Davis* 83 S. Ct. 227). Pursuant to Fed. R. Civ. P. 15(b)(1), when "...a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits."

Here, Defendants themselves have identified Mayor McDaniel as the proper party with respect to Plaintiffs' ratification allegations against City of Roy and Chief Armitage. Mayor McDaniel was the policy maker within the meaning of the statute.

1 Defendants would not be prejudiced by such an amendment where all Defendants,  
2 including Mayor McDaniel are represented by the same counsel and the same legal arguments,  
3 claims, and defenses apply to him as existing Defendant Chief Armitage.

4 **B. Mayor Rawlin “Anthony” McDaniel Should be included in the Complaint**

5 The City of Roy, through either Armitages or the Mayor’s failure to perform any  
6 investigation whatsoever is evidence of his and the Roy PD’s reckless indifference to Johnson’s  
7 training and discipline such that he failed to learn and/or learned to ignore its policies, including  
8 those on the use of lethal force and shooting into a vehicle.

9 Plaintiffs have presented evidence that the City of Roy should be liable because 1)  
10 Johnson’s actions were ratified by an official policy maker of the City of Roy, both Armitage and  
11 McDaniel and/or 2) The City of Roy and Armitage failed to properly train Johnson on the  
12 constitutional use of lethal force, and/or 3) Johnson was acting pursuant of longstanding policies,  
13 practices or customs that allowed Roy Police Officers to ignore and disregard written policies.

14 It has been testified to that the Mayor, on behalf of the City of Roy has fully ratified Johnson’s  
15 action through the actions of their officials. Both McDaniel and Armitage have upheld Johnson’s  
16 actions by completely ignoring his obvious constitutional violations when he attempted to kill Rice  
17 and Donahue without warning. McDaniel, on behalf of the City of Roy, adopted Johnson’s full  
18 version of the events and published his version in a press release. Ratification can also be evidence of  
19 municipal policies that lead to constitutional violations, such as Roy’s policy, practice or procedure  
20 of allowing Johnson to escape investigation or discipline for severe violations and major crimes.

21 Finally, Mayor McDaniel single handily ratified Officer Johnson’s conduct when he  
22 testified that Johnson could stay however long he likes.

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1 **VI. CONCLUSION**

2 Plaintiff Rule 15(b)(1) motion to amend to include Mayor Rawlin “Anthony” McDaniel  
3 with respect to the *Monell* claim, should be granted.

4  
5 **DATED** this 14th day of September, 2021.

6 DOLAN LAW FIRM, PC

7  
8 /s/ Jeremy M. Jessup

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**CERTIFICATE OF SERVICE**

The undersigned declares as follows:

1. I am over the age of 21 and not a party to this action.
2. I am an employee of Dolan Law Firm, PC, Attorney for Plaintiffs.
3. On this day, I certify that I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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- ☐ Facsimile
- ☐ Email
- ☒ CM/ECF

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

**DATED** at San Francisco, California this 14th day of September, 2021.

/s/ Maryleen Razo

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